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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 21 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of the )  
Commission's Rules To )  
Provide Channel )  
Exclusivity To Qualified )  
Private Paging Systems )  
at 929-930 MHz )

PR Docket No. 93-35

To: The Commission

REPLY COMMENTS  
OF THE  
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.  
AND THE  
COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

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## S U M M A R Y

The Industrial Telecommunications Association, Inc. ("ITA") and the Council of Independent Communication Suppliers ("CICS") support the Federal Communications Commission's proposal in this proceeding to permit applicants for the 929-930 MHz private paging channels to obtain frequency coordination from any of the three recognized 800/900 MHz frequency coordinators.

ITA/CICS disagree with those commenters who suggest that NABER should continue to be the exclusive coordinator for the 929-930 MHz channels. The Commission should permit competitive coordination for these channels. The introduction of competition in the coordination process will serve the public interest. With competitive coordination, applicants will have the flexibility to

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The Industrial Telecommunications Association, Inc. ("ITA") and the Council of Independent Communication Suppliers ("CICS")<sup>1</sup> hereby respectfully submit these Reply Comments in response to the various comments filed in the above-captioned proceeding.

I. BACKGROUND

1. In this proceeding, the Commission has proposed a

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<sup>1</sup> The Council of Independent Communication Suppliers is an unincorporated association of entities engaged in serving the needs of private radio eligibles, particularly those located in small and rural communities throughout the United States. CICS' membership is open to SMR operators, radio dealers, equipment suppliers, and consultants. CICS was formed to provide these entities with a voice in the policy-making process governing use of the electromagnetic spectrum, especially spectrum allocated to the private land mobile radio services. CICS is an independent membership market council of the Industrial Telecommunications Association, Inc. CICS did not file comments responding to the Commission's proposal in this proceeding but, in view of the issues raised in various comments, has chosen to participate at the Reply Comment stage.

system for incorporating channel exclusivity into the assignment

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## II. REPLY COMMENTS

[illegible]

**A. THERE IS NO VIRTUE IN AN EXCLUSIVE SITUATION.**

6. NABER and the members of its Association for Private Carrier Paging Section urge the Commission to find virtue in NABER's exclusive situation. Some commenters predict that "a potential administrative disaster could result" from multiple coordinators.<sup>3</sup> Others fear that multiple coordinators will create "the risk that applications will be made to languish."<sup>4</sup> NABER itself states that multiple coordinators will result in "delays in the application process and in an administrative oversight burden to the Commission."<sup>5</sup> ITA/CICS trust that the Commission will recognize these arguments as a rather transparent attempt to preserve the benefits of NABER's present situation.<sup>6</sup>

7. ITA and CICS do not expect NABER to welcome competition in the coordination of 929-930 MHz. Irrespective of NABER's misgivings, however, both the Commission and the user public should welcome competition. As documented in numerous studies and

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<sup>3</sup> Comments of Mobile Telecommunication Technologies, page 12.

<sup>4</sup> Comments of Arch Communications Group, page 6.

<sup>5</sup> Comments of NABER, page 13.

<sup>6</sup> The relevant literature redounds with examples of non-productive activities in which exclusive providers of goods and services typically engage. Among other things, exclusive providers tend to expend some of their returns to enhance or protect their power. Thomas M. Jorde et al., Antitrust, innovation, and Competitiveness 165 (1992).

relevant texts, there is little good that can be said in favor of preserving such situations. "(M)onopolies threaten allocative, productive, and also dynamic efficiency".<sup>7</sup>

**B. NABER DOES NOT BRING UNIQUE TECHNICAL EXPERTISE  
TO THE FREQUENCY COORDINATION FUNCTION.**

8. There is no magic involved in performing frequency coordinations. Reliable frequency coordinations are a function of, first, experienced, insightful and meticulous coordination professionals and, second, an accurate, up-to-date database. ITA has an abundance of the former and is quite capable of developing the latter.

9. ITA has forty years of experience in coordinating frequencies for private land mobile radio users. It has a long and successful history of coordinating applications above and below 800 MHz, wide-area as well as local, in the context of both shared and exclusive assignments.<sup>8</sup> ITA is well-equipped to coordinate the

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<sup>7</sup> Jorde, supra note 6, at 165. In this same vein, Judge Learned Hand has written that "immunity from competition is a narcotic, and rivalry is a stimulant." United States v. Aluminum Company of America, 148 F.2d 416, 427 (2nd Cir. 1945).

<sup>8</sup> Concern has been expressed by NABER and other commenters that multiple coordinators will somehow confuse or complicate the process of licensing paging systems on a nationwide and regional basis. Prior experience suggests the contrary, however. ITA has played a very active role in coordinating wide-area Enhanced Specialized Mobile Radio ("ESMR") systems seeking to use 800 MHz Industrial/Land Transportation and General Category channels. For many ESMR applicants desiring to access the General Category channels, ITA was the spectrum advisor of choice. Additionally, ITA has coordinated numerous 800 MHz multi-state systems for



929-930 MHz paging frequencies.

**C. NABER IS NOT UNIQUELY REPRESENTATIVE  
OF PRIVATE PAGING "USERS".**

10. As it did in the 800 MHz General Category Coordination proceeding, PR Docket No. 92-209, NABER seeks to raise the issue in the instant proceeding of whether other potential frequency coordinators are truly representative of the radio system users.<sup>9</sup> NABER would like the Commission and the paging industry to believe that, among the three recognized 800/900 MHz coordinators, NABER stands alone as "representative" of paging licensees and users.

11. When the Commission undertook its discussion of the criteria for selecting frequency coordinators in PR Docket No. 83-737, it was careful to require that a certified frequency coordinator be representative of the "users" in a particular service. Therefore, for example, the Report and Order in that

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utility and telephone maintenance applicants. The complexity of these utility and telephone maintenance systems dwarfs that of most wide-area paging systems.

<sup>9</sup> In its Report and Order adopted May 11, 1993 in PR Docket No. 92-209, the Commission amended its rules to permit applicants seeking to establish conventional SMR systems on General Category frequencies to obtain coordination from ITA and APCO as well as NABER. The Commission's motivation in doing so was to extend to all SMR applicants for General Category channels "the advantage of being able to choose a frequency coordinator from among the three recognized coordinators on the basis of criteria such as cost and speed of service". (FCC News Release, Mimeo #33176, dated May 18, 1993.)

proceeding states that "... we looked first to ascertain whether the organization was representative of users in the radio service it proposed to coordinate."<sup>10</sup> Likewise, in other discussions, the Report and Order speaks of "the need for a coordinator to be representative of the users in the category for which it would be certified."<sup>11</sup>

12. The Commission's well-stated intention is that the representative character of a frequency coordinator should run to the "users". In the context of private paging systems, the subscribers to the radio service are more appropriately viewed as "users" than are the licensees.<sup>12</sup>

13. Moreover, under the Commission's proposal, the frequencies available at 929-930 MHz would be available for both "commercial" and "non-commercial" use on an equal basis. The distinction currently found in Section 90.494 between non-commercial frequencies (Pool 1) and commercial frequencies (Pool 2) would become irrelevant. Though commercial applicants are likely to comprise a significant percentage of 929-930 MHz

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<sup>10</sup> Report and Order (FCC 86-143), PR Docket No. 83-737, 103 FCC 2d 1093 (1986), paragraph 70. [Emphasis added.]

<sup>11</sup> Id., paragraph 108. [Emphasis added.]

<sup>12</sup> As noted above, the Council of Independent Communication

licensees, there will no doubt continue to be systems licensed for internal use by non-commercial industrial, land transportation, and public safety entities.

14. While NABER seems to suggest that commercial providers will comprise the entire universe of private paging licensees, ITA/CICS trusts that the Commission will not fall victim to this same fallacy. There remains a very legitimate and sizeable role in the private radio environment for "non-commercial" systems. NABER cannot claim to be uniquely representative of 929-930 MHz "non-commercial" industrial, land transportation, and public safety licensees. Since ITA and APCO are also representative of 929-930 MHz licensees as well as "users" subscribing to 929-930 MHz paging services, the Commission's proposal comports completely with the relevant standards for recognition of frequency coordinators.

**D. EXCLUSIVITY IN THE COORDINATION OF 929-930 MHZ FREQUENCIES IS COUNTER TO ECONOMIC THEORY**

15. The current situation clearly does not serve the public interest. In frequency coordination, as in other fields, competition is therapeutic. "(T)he unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the

greatest material progress."<sup>13</sup> Competitive coordination will offer a strong incentive for each of the coordinators to provide the best service possible to applicants.<sup>14</sup> The beneficiaries will be the user public.

16. It is a fundamental tenet of economic theory that exclusive situations are not socially desirable. Traditional structural theory, and the volumes of case law predicated on it, evidence a hostility to exclusive arrangements due, in part, to the deadening effect that they exert on the innovative process."<sup>15</sup> On the other hand,

(c)ompetition tends to keep private markets working in ways that are socially desirable. It encourages an efficient allocation of resources, stimulates efficiency and product innovation, and may even encourage the

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<sup>13</sup> Northern Pacific Ry. Co. v. United States, 356 U.S. 1, 4 (1958).

<sup>14</sup> Many of the entities filing comments in this proceeding assert that there must be a "level playing field" for the private carrier paging and common carrier paging services. Mobile Telecommunication Technologies Corporation ("Mtel"), for example, states that "an integrated regulatory framework which provides for optimal operating conditions for all paging entities regardless of classification is pro-competitive and undeniably in the public interest." Comments, page 16. At the same time, however, Mtel opposes competition with respect to frequency coordination. Mtel maintains that "a frequency coordination process that relies on multiple frequency coordinators could lead to extensive frequency coordination problems ...." Comments, page 12. ITA/CICS believe that Mtel's approach is misguided. The same factors that make competition desirable in the paging business also are of benefit when it comes to frequency coordination.

<sup>15</sup> Jorde, supra note 6, at 165.

conservation of scarce resources.<sup>16</sup>

**E. THE NEED TO DEVELOP A DATABASE FOR 929-930 MHZ  
IS NOT A BAR TO EFFECTIVE FREQUENCY COORDINATION**

17. Celpage argues in its comments that "NABER has compiled a PCP database which would be extremely difficult to duplicate."<sup>17</sup> As the Commission will readily recognize, the need to develop a licensing database is not an impediment to multiple coordinators. ITA has had considerable experience in assembling a variety of databases in its 40 years as a frequency coordinator.

18. ITA has assembled and continues to maintain reliable databases for 30-50 MHz, 150-174 MHz, 421-512 MHz, 806-940 MHz as well as the Part 94 multiple address frequencies. Additionally, ITA maintains databases on behalf of the recognized frequency coordinators for the Telephone Maintenance, Petroleum, Film and Video Production, and Relay Press Radio Services. For an experienced coordinator in ITA's position, the process of adding 929-930 MHz to its inventory of frequency bands, and subsequently updating the data for the forty paging channels involved, is simply not an overwhelming effort.

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<sup>16</sup> Robert N. Corley et al., The Legal Environment of Business 187 (1981).

<sup>17</sup> Celpage comments, page 13.

12/11/19 - The coordination committee was convened to avoid the

door mentality".<sup>20</sup> In fact, the race, if there is one, will end at the coordinators' doors.<sup>21</sup> Beyond that point, applicants will no longer be able to control the progress of their applications. Nor will the coordinators be able to engage in a "race". The Commission has a long-standing "requirement that coordinators process applications sequentially."<sup>22</sup> Under this standard, coordinators must process applications in order of receipt and are not at liberty to engage in a "race".

### III. CONCLUSION

21. ITA and CICS urge the Commission to find, as did Judge Learned Hand, that the perpetuation of exclusive arrangements "deadens initiative, discourages thrift and depresses energy".<sup>23</sup> ITA/CICS urge the Commission to promptly implement its proposal to permit 929-930 MHz applicants to obtain coordination from any

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<sup>20</sup> NABER comments, page 13; Paging Network, Inc. comments, page 23.

<sup>21</sup> In reality, of course, even in the current environment where NABER is the sole coordinator for 929-930 MHz applications, applicants are placed in an "adversarial" relationship with one another. NABER must process paging applications, as well as all other applications, in order of receipt. It goes without saying that in markets where there is a shortage of available paging frequencies, if Applicant A submits its application to NABER ahead of Applicant B, Applicant A should fare better. Regardless of whether there is one or multiple coordinators, the 929-930 MHz

of the three recognized 800/900 MHz frequency coordinators. Competitive coordination will ensure that applicants receive the best possible service from the recognized coordinators.

**WHEREFORE, THE PREMISES CONSIDERED,** the Industrial Telecommunications Association, Inc. and the Council of Independent Communication Suppliers respectfully submit these Reply Comments and urge the Federal Communications Commission to act in accordance with the views expressed herein.

**COUNCIL OF INDEPENDENT  
COMMUNICATION SUPPLIERS**

By: Andrew Daskalakis  
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Dated: May 21, 1993